

Case 1:13-cv-00591-YK-GS Document 1 Filed 03/04/13 Page 1 of 11  
IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

MATTHEW J. ROMERO, HAKEEM T. JEFFERSON,  
TYRONE E. A. SHORT, KATONE WALKER  
TIMOTHY TYLER, ROBERT PEREZ  
JASON MERCALDO, ANGEL ESPADA  
V.  
Plaintiffs

CIVIL ACTION NO. 13-CV-591

**FILED  
SCRANTON**

MAR 1 2013

JS  
PER DEPUTY CLERK

JURY TRIAL DEMAND.

Introduction

This is a civil rights action filed by the above named Plaintiffs. County prisoners as a class action for damages and injunctive relief under 42 U.S.C. § 1983, alleging retaliation, cruel and unusual punishment from conditions of confinement, denial of due process clause and racial discrimination. All the actions described are said to have violated all Plaintiffs 1st, 5th, 8th, and 14th Amendments under the U.S. Constitution and the Equal Protection Clause.

Jurisdiction

1. The court has jurisdiction over the Plaintiff's claims of violation of federal constitutional rights under 42 U.S.C. § 1981, § 1982, § 1983, § 1985 and § 1986 and 42 U.S.C. §§ 1331(1) and 1343.

2. The court has supplemental jurisdiction over the Plaintiff's state law tort claims under 28 U.S.C. § 1337.

PARTIES

3. Matthew J. Romero, Hakeem T. Jefferson, Tyrone E. A. Short, Katone Walker, Timothy Tyler, Robert Perez, Jason Mercaldo and Angel Espada are all prisoners who are confined at Northumberland County Prison at the time of this filing where the alleged violations took place and where prisoners at Northumberland County Prison (NCP hereafter) when the violations took place.

4. Defendant Roy Johnson is the Warden of NCP, and was the warden during the violations that are alleged in this complaint. He is sued in his individual capacity.

5. Defendant Brian Wheary is the Deputy warden of NCP and was the warden, Deputy warden during the violations alleged in this complaint. He is sued in his individual capacity.

6. Lt. Jim Smink and Lt. Jason Carl are both lieutenants who were working at NCP during the violations alleged in this complaint. They are both sued in their individual capacity, as well as Lt. Walburn.

7. Sgt Krista Brouse, Sgt. Joshua Lehman, and Sgt Gibbs are all sergeants who were working at NCP during the violations alleged in this complaint. They are sued in their individual capacity.

8. ALL Defendants were employed at NCP during the alleged violations described in this complaint and were direct cause of the violations and they acted with knowing intent with deliberate indifference out of retaliation for ALL Plaintiffs exercising their Constitutional rights. ALL Defendants address is 34 N. 2nd St Sunbury PA 17801.

#### CLASS ACTION ALLEGATIONS

9. Throughout the Month of February ALL the Plaintiffs were making complaints and requesting for grievances due to the Bias and racial conduct of all the defendants only allowing mostly whites go to work release, have Prison jobs, receive indigent clothes, legal supplies, and be treated with respect.

10. All the defendants denied the Plaintiffs grievances throughout the month.

11. Mr Wheary and Mr Johnson controls who goes to work release with the rest of defendants suggesting who should go to work release.

12. Lt Smink, Lt Carl, Sgt Brouse, Sgt Lehman and Sgt Gibbs picks who is to have Prison Jobs with the approval of Mr Johnson and Mr Wheary.

13. Also throughout the month of February ALL the Plaintiffs made complaints and requested Grievances due to the cruel and unusual punishment violations to the 8<sup>th</sup> Amendment of the U.S. Constitution due to the conditions of confinement at NCP.
14. There is no hot water in the cells at NCP
15. There is limited Hot water for the showers at NCP i.e. Showers are hot at only certain times at NCP mostly mornings.
16. There are no proper cleaning supplies at NCP. The cleaning solution is watered down. The MOP heads are months old. The cleaning rags are old used towels and the holding room for these supplies is filthy filled with dirt, bugs, and bodily waste.
17. There is no ventilation system at NCP. NCP has old heating pipes that make banging noises throughout the day and night keeping Plaintiffs awake.
18. The windows are broke in most cells and it is the winter time. Cold air comes in making it cold.
19. The mattresses are old, ripped up, moldy, dirty never cleaned after use, and holding in the holding room with the cleaning supplies. Because of the holes in the mattresses human body waste soaks into the mattresses causing them to have a foul smell.
20. There are vermin, Flies, Bugs, Ants, Cockroaches and mice in NCP that come into the cells, and get into food and beds.
21. The Defendants only allow one prisoner to clean a whole unit that is about 50 yards in length.

22. The trays and cups that are issued for feeding are not properly cleaned leaving food or juice on the tray or cup from the following meal.

23. NOP is overcrowded having ~~over~~ sets of 3, 5, or 8 prisoners in one cell which is also the cause of a noise level that deprives the plaintiffs of proper sleep.

24. The Indigent Hygiene kits that consist of Shampoo that is allegedly "ALL-IN-ONE (ie shave shower and shampoo), toothpaste and that's it.

25. The "ALL-IN-ONE" is 4 FL. OZ and lasts no longer than 2-4 days. Which is the cause of prisoners smelling foul because they have no REAL soap. These hygiene kits are passed out maybe 1st a month even though policy states they are to be passed out on the 1st and 15th of the month.

26. NOP is filled with asbestos ~~thick~~.

27. The cold-water in the cells turn Black and Brown when the water is turned on.

28. The C.U. have SMOKING Breaks outside the prison and because of the Broken windows smoke enters the cell.

### PETALIATION

29. On Feb. 22nd 2013 ALL THE PLAINTIFFS were threatened with force by Lt Smink with the support of Mr Johnson and Mr Wheary. The threat was if we did not comply with their retaliatory conduct we would be attacked.

30. ALL THE PLAINTIFFS were placed in one cell Left wing 30 cell

31. WE (ALL PLAINTIFFS) were given no notice, report, document, misconduct, hearing or a right to be heard to object to being placed in 30 cell or why we

were placed in 30 cell

32. All Eight Plaintiffs were placed in 30 cell that has one toilet, one sink, two windows and eight Bunks. (Bed Frames) The cell is APPROX.

33. The cell was Filthy, with Dead vermin. Bugs, cockroaches, Flies, Bodily waste smeared on the wall and two Broken windows

34. The Plaintiffs requested cleaning supplies which was denied By Lt. Smink, ~~Brouse~~ SGT. Brouse, and SGT Lehman

35. All Plaintiffs requested Grievances from the Lt Smink to which he replied "You guys still don't get what do you think you in there for? YOU'RE NOT GETTING GRIEVANCES!"

36. On 2nd shift SGT. Brouse and SGT Lehman also denied us (ALL Plaintiffs) Grievances. SGT Brouse replied to our (All Plaintiffs) request with "You've seen ~~what~~ what happened to Adams and Trometter when they asked for grievances!"

37. On that day we were forced to stay in that foul cell with Filthy mattresses

38. we were given 2 hours of recreation but denied a shower due to no hot shower water

39. On Feb. 23 2013. (a Saturday) we were denied cell cleaning (which is supposed to be the day for "LOCK UPS", Protective cost , and Administrative segregation) By Lt Smink and Lt Walburn

40. On that day on 2nd shift SGT Lehman informed the Plaintiffs we were placed on 22 hour lock in. No reason or documentation was given

41. Again we were forced to stay in a foul cell

42. On Feb 24 2013 we were denied showers, recreation. By SGT Lehman who worked First Shift and controlled the Prison at that time.

43. When SGT Lehman was asked why they were being denied "rec." SGT Lehman stated "YOU UPSET THE WRONG PEOPLE."

44. That same day we asked Lt Carl for our "rec." and showers and he also denied us our request and denied us grievances.

45. A wood door was placed over our cell gate by the orders of SGT Lehman, Mr Johnson and Mr Wheary because we continued to ask for grievances.

46. On Feb 25 we were denied showers due to no hot water. But we were given recreation (2 hours).

47. On that day Lt Smink and SGT Brouse stated "things would get harder" because we continued to ask for grievances.

48. On Feb 26 2013 Lt Smink stated "Things just got harder" and he walked away. This was on 1<sup>st</sup> shift.

49. We asked SGT Lehman what Lt Smink meant later on in the day when SGT Lehman was on the wing and SGT Lehman stated "you'll see".

50. The same day on the 2nd shift Lt Carl informed us (ALL Plaintiffs) we would have to wear Handcuffs, with a Black Box connected to them with a chain attached, and leg chains during our "rec." Lt Carl stated "Now you know what Smink means!"

51. These restraints were for the full purpose of punishment and to cause pain and that's what they

did come run to all the Plaintiffs.

52. On Feb 27 2013 Lt Smink came to our cell on First shift left wing 30 cell

53. we informed Lt Smink about the broken windows and that we were cold.

54. Lt Smink stated "It can get colder if you guys keep asking for grievances" Lt Smink also informed us we were getting no "rec" just showers and that Mr Johnson and Mr Wheary took our visiting and phone rights.

55. That same day on 2nd shift Plaintiffs were denied showers due to no hot water

56. Again Plaintiffs asked Lt Carl for grievances and he stated "What did Smink just tell you guys?"

57. shortly after Lt Carl ordered the whole Block to be locked in.

58. After the Block was locked in Lt Carl came to our cell door with a big can of mace and threatened to spray us all if anyone moved

59. Lt Carl had about 5-7 other officers with him.

60. one by one the Plaintiffs were placed in handcuffs and taken to the Basement of the Prison that is considered the max-security unit.

70. we were celled up by two's in different cells that do not even have heating pipes

71. It was cold and none of the Plaintiffs were able to sleep really.

72. we were given no cleaning supplies to clean the cells that we were placed in that are used for mostly mental prisoners who smear feces and human waste.

73. The cells had bugs, spiders, vermin and cockroaches in them.

74. Plaintiffs were "celled up" (Placed in the same cell) in this order. Mr Romero with Mr Jefferson, Mr Mercado with Mr Walker, Mr Short with Mr Espada and Mr Perez with Mr Tyler.

75. We were not permitted to take any of our property or legal work.

76. Once we were placed in the cells Lt Carl stated that he was told we (Plaintiffs) were planning a lawsuit with Dashawn Garrison and he (Lt Carl) "was gonna put a stop to it."

77. On Feb 28 2013 we were all brought back up from the max unit to Left wing 30 cell.

78. When we were placed in our cell we noticed right away that our cell had been searched.

79. All of our belongings were thrown all over the cell. Photos were destroyed as well as legal work and our windows were taken out.

80. We were not given explanation why our cell was searched or our property was destroyed or why our windows were taken during the winter time.

#### PREVIOUS LAWSUITS

81. None of the plaintiffs have ever filed a lawsuit.

#### Exhaustion of Administrative Remedies

82. ALL THE PLAINTIFFS ATTEMPTED TO EXHAUST REMEDIES BY FILING GRIEVANCES BUT WERE DENIED. PLAINTIFFS MADE A GOOD EFFORT TO FILE A GRIEVANCE BUT THOSE EFFORTS WERE HINDERED BY ALL

defendants.

## INJURIES

83. ALL the Plaintiffs have been sick ~~on~~ on and off throughout their stay at NCP
84. Plaintiff have been deprived off sleep because of the Noise and the loud Banging of the Heating pipes
85. Plaintiffs have been force to smell ~~bad~~ Funk. Feces etc
86. Plaintiffs have received rashes on their bodies
87. Plaintiffs have losted weight
88. ALL the injurier mentioned above have also caused emotional stress, depression, as well as other mental problems.
89. Plaintiffs suffer from on and off headaches, Chest Pains, Muscle aches, decreased of appetite Stomach Pain, Throat Pain, Shortness of breath, etc.

## CLAIMS OF RELIEF

90. The actions of all the defendants clearly constitutes violations to ALL Plaintiffs 1st, 5th 8<sup>th</sup> and 14<sup>th</sup> Amendment under the U.S. Constitution.
91. The actions of all the defendants were done with full intent and constitute the same as stated above
92. The actions of all the defendants constitutes deliberate indifference to ALL Plaintiffs

BELIEF REQUESTED

WHEREFORE, the Plaintiffs in this class action requests the court to grant the following relief:

A. Issue a declaratory judgment stating that:

1. The actions alleged in the complaint that were carried out and or supported by all Defendants violated all the Plaintiffs 1<sup>st</sup>, 5<sup>th</sup>, 8<sup>th</sup> and 14 Amendments under the U.S. Constitution.

B. Issue an injunction ordering Warden Roy Johnson to:

1. Correct and address all conditions of confinement alleged in the complaint as cruel and unusual punishment

2. Release all Plaintiffs from Segregation

3. Transfer all Plaintiffs out of N.C.P. to another prison due to all the actions alleged in the complaint are alleged against top prison officials who control the prison. Continue to violate Plaintiffs rights until they can be addressed and corrected

C. Award compensatory and punitive damages in the following amount

1. \$ 200,000.00 awarded to each Plaintiff for the acts alleged in the complaint

D. Grant such other relief as it may appear that the Plaintiffs entitled.

THE Below signatures are the signatures of the class members ~~bring~~ bringing this class action § 1983 suit against the foregoing mentioned Defendants. The signatures below certify that each class member has read and ~~the~~ understood the 11 page complaint:

Jason Mercado  
JASON MERCADO  
39 N 2nd St  
Sunbury PA 17801  
2/28/13

Robert Perez  
ROBERT PEREZ  
39 N 2nd St  
Sunbury, PA 17801  
2/28/13

Angel Espada  
ANGEL ESPADA  
39 N 2ND ST  
SUNBURY, PA 17801  
2/28/13

Hakeem Jefferson  
HAKEEM JEFFERSON  
39 North 2nd St  
Sunbury PA 17801  
2/28/13

Timothy Tyler  
TIMOTHY TYLER  
39 N 2nd St  
Sunbury, Pa 17801  
2/28/13

Tyrone E.A. Short  
TYRONE E.A. SHORT  
39 N. 2nd St.  
Sunbury, Pa 17801  
2/28/13

Katone Walker  
KATONE WALKER  
39 North 2<sup>nd</sup> St  
Sunbury PA 17801  
2/28/13

Matthew Romero  
MATTHEW ROMERO  
39 N 2nd St  
Sunbury, Pa 17801  
2/28/13

We, the class action members, Matthew J. Romero, Hakeem T. Jefferson, Tyrone E.A. Short, Katone Walker, Timothy Tyler, Robert Perez, Jason Mercado, and Angel Espada, declare the foregoing is true and correct to the best of our knowledge.

<u>Matthew Romero</u> Signature <u>2/28/13</u>	<u>Tyrone E.A. Short</u> Signature <u>2/28/13</u>
<u>Hakeem Jefferson</u> Signature <u>2/28/13</u>	<u>Katone Walker</u> Signature <u>2/28/13</u>
<u>Timothy Tyler</u> Signature <u>2/28/13</u>	<u>Angel Espada</u> Signature <u>2/28/13</u>
<u>Robert Perez</u> Signature <u>2/28/13</u>	<u>Jason Mercado</u> Signature <u>2/28/13</u>